Jitender Singh a/l Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal

A

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NOS W-01–21 OF 2006 AND W-01–247 OF 2010
ZALEHA ZAHARI, KANG HWEE GEE AND CLEMENT SKINNER JJCA
18 MAY 2011

B

C

Administrative Law — Judicial review — Application for — Compensation awarded in land reference proceedings — Application made three years later — Whether application time barred under O 53 r 3(6) of the Rules of the High Court 1980 — Whether compliance with time frame prescribed by the Rules is fundamental — Whether application prohibited under provisions of s 40D(3) of the Land Acquisition Act 1960

D

Land Law — Acquisition of land — Compensation — Assessment of — Differing opinions of assessors — Whether High Court ought to accept opinion in favour of landowners — Whether such acceptance consonant with art 13 of the Federal Constitution — Land Acquisition Act 1960 s 40D

E

Land Law — Acquisition of land — Compulsory acquisition — Judicial review — Application for judicial review of compensation awarded in land reference proceedings — Application made three years later — Whether application maintainable — Land Acquisition Act 1960 s 40D(3) — Rules of the High Court 1980 O 53 r 3(6)

F

G

Land Law — Acquisition of land — Reference to court — Costs — Amount claimed by landowners far in excess of compensation awarded by High Court — Whether landowners should be deprived of costs — Land Acquisition Act 1960 s 51

H

Land Law — Acquisition of land — Reference to court — Differing opinions of assessors — Whether judicial discretion of High Court limited — Whether High Court compelled to concur with either one opinion — Whether High Court free to arrive at its own decision — Land Acquisition Act 1960 s 40D

I

The appellants' lands ('the said lands') were subjected to acquisition under the Land Acquisition Act 1960 ('the Act'). The said lands were gazetted for acquisition pursuant to s 8 and the land administrator conducted an enquiry

pursuant to s 12 to determine the amount of compensation payable to the appellants. The land administrator awarded compensation to the appellants at a rate of RM193.61 per square foot making a total award of RM31,987,351.45. The appellants objected to the amount of compensation awarded and the matter was referred to the court pursuant to s 38. The appellants sought an award at a rate of RM650 per square foot as held out by their valuers. The High Court judge hearing the land reference sat with two assessors ie the government valuer and the private valuer. Both the government valuer and private valuer applied the comparative method of valuation and applied the same comparable. The government valuer valued the said lands at a rate of RM198 per square feet, thus deriving a compensation amount of RM32,713,577.32. Whereas, the private valuer valued the said lands at a higher rate of RM201.60 per square feet, thus deriving a compensation amount of RM33,307,932.05. The learned judge was of the view that both valuations were equally sound. The learned High Court judge then referred to s 40D and adopted the principle that, where both valuers had applied the correct principles of valuation, the court was to adopt the valuation that favoured the landowners. Hence, the valuation of the private valuer was adopted and the amount of compensation was increased from RM31,987351.45 to RM33,307,932.05. On the issue of costs, by reason of the amount claimed by the appellants being excessive compared with the amount awarded by the court, the High Court judge invoked s 51 and directed the appellants to pay 50% of the land administrator's costs and the fee of the private valuer at a rate of RM500 per day. About three years after the High Court judge pronounced his decision in the land reference, and one year three months of the High Court judge's grounds of decision, the appellants filed an application for judicial review for a declaration that s 40D(2) and 40D(3) are null and void and for an order that the decision of the High Court judge in respect of the amount of compensation awarded be set aside. On the date of the filing of the application for judicial review, the land reference appeal was then still pending before the Court of Appeal. The appellants contended that their right to receive adequate compensation under art 13 of the Federal Constitution ('Constitution') had been infringed as there was no independent judicial determination in the ascertainment of the amount of compensation due to them. The judicial review application was dismissed and the appellants appealed against that decision.

Held, dismissing both the appeals:

(1) The judicial review application was not maintainable by reason of the express provision in s 40D(3). Further, such an attempt to obtain a different outcome by way of an application for judicial review after more than three years had lapsed after the High Court judge had pronounced his decision in the land reference, and more than a year after the grounds of judgment had been furnished, clearly contravened O 53 r 3(6) of the

Rules of the High Court 1980 ('the RHC'). Compliance with the time frame prescribed by the RHC is fundamental as it goes to jurisdiction. On this ground alone the application for judicial review could and should have been dismissed (see paras 17–18); *Mersing Omnibus Co Sdn Bhd v Minister of Labour And Manpower & Anor* [1983] 2 MLJ 54 referred.

(2) Limiting the discretion of a High Court judge hearing a land reference to the opinion of the assessors appointed to assist him, alternatively, by the opinion of one of the assessors, does not infringe art 13 of the Constitution. Such a provision is valid and of full legal effect. The limitation requiring him to be guided by such an opinion is warranted as a High Court judge is no expert in determining the value of land. Thus, the requirement that the amount of compensation to be awarded is to be based on an opinion given by the experts in this particular field (ie a valuer), in determining the market value of the land that had been acquired and the amount of compensation to be awarded is well founded (see para 26).

(3) The record clearly showed that High Court judge made his own determination on the compensation to be awarded when faced with the different opinion of the assessors. He accepted the higher of the two. He was right in awarding the appellants the higher of the two valuations. The reasoning given for preferring one over the other was sound and should not be disturbed by an appellate court. Further, on the issue of costs in the land reference, the High Court judge was right in involving s 51 by not awarding costs to the appellants and in making the order of costs which he did (see para 28).

[Bahasa Malaysia summary

Tanah-tanah perayu-perayu ('tanah-tanah tersebut') adalah tertakluk terhadap pemerolehan di bawah Akta Pemerolehan Tanah 1960 ('Akta tersebut'). Tanah-tanah tersebut telah diwartakan untuk pemerolehan mengikut s 8 dan pentadbir tanah telah melakukan siasatan menurut s 12 untuk menentukan jumlah pampasan yang perlu dibayar kepada perayu-perayu. Pentadbir tanah telah mengawardkan pampasan kepada perayu-perayu pada kadar RM193.61 satu kaki persegi membawa kepada jumlah award sebanyak RM31,987.45. Perayu-perayu membantah jumlah pampasan yang diawardkan dan perkara tersebut telah dirujuk kepada mahkamah mengikut s 38. Perayu-perayu telah memohon award pada kadar RM650 satu kaki persegi seperti yang diputuskan oleh penilai-penilai mereka. Hakim Mahkamah Tinggi yang mendengar rujukan tanah bersama dua orang penilai-penilai iaitu penilai kerajaan dan persendirian. Kedua-dua penilai kerajaan dan persendirian telah menggunapakai kaedah perbandingan nilai komparatif dan mengunakan bandingan yang sama. Penilai kerajaan telah menilai tanah-tanah tersebut pada kadar RM198 satu kaki persegi, justeru memperoleh amaun pampasan sebanyak RM32,713,577.32. Manakala, penilai persendirian telah menilai

tanah-tanah tersebut pada kadar yang lebih tinggi sebanyak RM201.60 satu kaki persegi, justeru memperoleh amaun pampasan sebanyak RM33,307,932.05. Hakim bijaksana berpendapat bahawa kedua-dua penilaian adalah sama-sama kukuh. Hakim Mahkamah Tinggi yang bijaksana kemudian telah merujuk kepada s 40D dan menggunapakai prinsip bahawa, di mana kedua-dua penilai telah menggunapakai prinsip-prinsip penilaian yang betul, mahkamah hendaklah menggunapakai penilaian yang berpihak kepada pemilik-pemilik tanah. Oleh itu, penilaian penilai persendirian telah digunapakai dan amaun pampasan telah dinaikkan daripada RM31,987351.45 kepada RM33,307,932.05. Mengenai isu kos, disebabkan amaun yang dituntut oleh perayu-perayu melebihi daripada amaun yang diawardkan oleh mahkamah, hakim Mahkamah Tinggi telah menggunapakai s 51 dan mengarahkan perayu-perayu untuk membayar 50% daripada kos-kos pentadbir tanah dan fi penilai persendirian pada kadar RM500 sehari. Sekitar tiga tahun selepas mahkamah memberikan keputusan beliau dalam rujukan tanah tersebut, dan 1 tahun 3 bulan selepas alasan-alasan keputusan hakim Mahkamah Tinggi, perayu-perayu telah memfailkan permohonan semakan kehakiman untuk deklarasi bahawa s 40D(2) dan 40D(3) adalah batal dan tidak sah dan untuk perintah bahawa keputusan hakim Mahkamah Tinggi mengenai amaun pampasan yang diawardkan untuk diketepikan. Pada tarikh pemfailan permohonan semakan kehakiman, rayuan rujukan tanah masih lagi tertunda di hadapan Mahkamah Rayuan. Perayu-perayu berhujah bahawa hak mereka untuk menerima pampasan yang berpatutan di bawah perkara 13 Perlembagaan Persekutuan ('Perlembagaan') telah dilanggar memandangkan tidak terdapat sebarang penentuan kehakimam bebas dalam memastikan amaun pampasan yang perlu dibayar kepada mereka. Permohonan semakan kehakiman telah ditolak dan perayu-perayu telah membuat rayuan terhadap keputusan tersebut.

Diputuskan, menolak kedua-dua rayuan:

(1) Permohonan semakan kehakiman tidak boleh dikekalkan disebabkan peruntukan nyata dalam s 40D(3). Selanjutnya, percubaan sedemikian untuk memperoleh kesimpulan yang berbeza melalui permohonan semakan kehakiman selepas lebih daripada tiga tahun telah luput selepas hakim Mahkamah Tinggi membuat keputusan beliau dalam rujukan tanah tersebut, dan lebih daripada satu tahun selepas alasan-alasan penghakiman telah dikemukakan, dengan jelas berlawanan dengan A 53 k 3(6) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Kepatuhan dengan jangka masa yang ditetapkan oleh KMT adalah penting memandangkan ia melibatkan bidang kuasa. Berdasarkan alasan ini semata-mata permohonan untuk semakan kehakiman boleh dan seharusnya ditolak (lihat perenggan 17–18); *Mersing Omnibus Co Sdn Bhd v Minister of Labour And Manpower & Anor* [1983] 2 MLJ 54 dirujuk.

(2) Mengehadkan budi bicara seorang hakim Mahkamah Tinggi yang sedang mendengar rujukan tanah terhadap pendapat penilai-penilai yang dilantik untuk membantunya, secara alternatif, oleh pendapat salah seorang penilai, tidak bercanggah dengan perkara 13 Perlembagaan. Peruntukan sedemikian adalah sah dan mempunyai kesan undang-undang sepenuhnya. Pengehadan tersebut memerlukan beliau dibimbing oleh pendapat tersebut adalah perlu memandangkan hakim Mahkamah Tinggi bukanlah pakar dalam menentukan nilai tanah. Justeru, keperluan bahawa amaun pampasan yang hendak diawardkan adalah berdasarkan pendapat yang diberikan oleh pakar dalam bidang tersebut (iaitu seorang penilai), dalam menentukan nilai pasaran tanah yang telah diperoleh dan amaun pampasan yang diawardkan adalah berasas (lihat perenggan 26).

(3) Rekod jelas menunjukkan bahawa hakim Mahkamah Tinggi telah membuat penentuan beliau sendiri terhadap pampasan yang diawardkan apabila berdepan dengan pendapat berlainan penilai-penilai. Beliau telah menerima amaun yang lebih tinggi di antara kedua-duanya. Beliau adalah betul dalam mengawardkan perayu-perayu penilaian yang lebih tinggi di antara kedua-duanya. Sebab yang diberikan kerana lebih memihak kepada nilai tersebut berbanding dengan nilai yang satu lagi adalah kukuh dan tidak patut diganggu oleh mahkamah bidang kuasa rayuan. Selanjutnya, mengenai isu kos dalam rujukan tanah, hakim Mahkamah Tinggi adalah betul dengan melibatkan s 51 dengan tidak mengawardkan kos-kos kepada perayu-perayu dan dalam membuat perintah kos-kos sepertimana yang dilakukan oleh beliau (lihat perenggan 28).]

Notes

For cases an application for judicial review, see 1(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 254–279.

For cases on compensation, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2125–2169.

For cases on compulsory acquisition, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2170–2173.

Cases referred to

Mersing Omnibus Co Sdn Bhd v Minister of Labour And Manpower & Anor [1983] 2 MLJ 54, FC (refd)

Legislation referred to

Federal Constitution art 13
Land Acquisition Act 1967 ss 8, 12, 38, 40D, 40D(1), (2), (3), 51
Rules of the High Court 1980 O 53 r 3(6)

Appeal from: Land Reference No S3(S6)–15–13 of 2001 and Originating Summons No R1–24–06 of 2009 (High Court, Kuala Lumpur)

Balwant Singh Sidhu (Balwant Singh Sidhu & Co) for the appellant in both appeals.
Roslan Abu Bakar (Senior Federal Counsel, Attorney General's Chambers) for the respondent in Appeal No W-01–21 of 2006.
Shamsul Bolhassan (Senior Federal Counsel, Attorney General's Chambers) for the respondent in Appeal No W-01–247 of 2010.

Zaleha Zahari JCA (delivering judgment of the court):

[1] In this judgment Appeal No W-01–21 of 2006 will be referred as 'the land reference appeal' whilst Appeal No W-01–247 of 2010 will be referred as 'the 2010 appeal'. Unless expressly mentioned, reference to any legal provision refers to the provisions of the Land Acquisition Act 1960 ('the Act').

[2] What led to the land reference which is the subject matter of the land reference appeal, and the appellants filing an application for judicial review on 4 March 2009 to set aside the decision of the High Court judge dated 15 December 2005 in respect of the land reference, (the subject matter of the 2010 appeal) was this.

KUALA LUMPUR LAND REFERENCE NO S3(S6)-15–13 OF 2001

[3] The appellants' lands (ie Lots 176 held under Grant No 36856, Lot No 267 held under Grant No 28925 and Lot 268, held under Grant No 28926 situated at Section 72, Jalan Berhala, Brickfields, Bandar Kuala Lumpur ('the said lands')) were subjected to acquisition under the Act for the purposes of a project known as 'Projek KL Monorail' ('the project').

[4] The said lands were gazetted for acquisition pursuant to s 8 on 17 February 2000 vide Warta Kerajaan Persekutuan No 1636. The total land area of the said lands to be acquired was 165,217.92 square ft. It is not in issue that there were then 109 squatters in occupation of the said lands.

[5] The land administrator conducted an enquiry pursuant to s 12 to determine the amount of compensation payable to the appellants arising from the said acquisition. At the conclusion of the enquiry the land administrator awarded compensation to the appellants at a rate of RM193.61 per square ft making a total award of RM31,987,351.45.

[6] The appellants objected to the amount of compensation awarded by the land administrator by filing form n requesting the land administrator to refer

the matter to the court for its determination pursuant to s 38. The appellants contended that the compensation awarded was inadequate and that an award at a rate of RM650 per square ft as held out by their valuers, Messrs KGV-Lambert Smith Hampton, was more appropriate. The land administrator then referred the matter to the Registrar, Kuala Lumpur High Court by submitting Form O, which was duly registered on 15. December 2001 as Kuala Lumpur High Court Land Reference No S3(S6)-15–13 of 2001.

[7] The High Court judge hearing the land reference sat with two assessors ie Encik Phuah Tick Lai, Director, Valuation Department, Pahang ('the government valuer') and Encik Mohd Basri Rahmat, a Director from HASB Consultants Sdn Bhd ('the private valuer') to determine the adequacy of the compensation payable to the appellants. Based on the documentary evidence, including the valuation reports of both parties and the submissions presented, the government valuer and private valuer gave their respective opinion in writing to the High Court judge as to the market value of the said lands at the time of acquisition.

[8] Both the government valuer and private valuer applied the comparative method of valuation. Both also applied the same comparable. Factors as to location, size, date of transaction, development potential and the existence of squatters on the said lands were taken into account and adjustments made which they considered appropriate.

[9] The valuation of the government valuer and private valuer differed slightly. The government valuer valued the said lands at a rate of RM198 per square ft. Based on the government valuer's valuation the compensation payable to the appellants was RM32,713,577.32. As for the private valuer, he valued the said lands at a higher rate of RM201.60 per square ft. The compensation payable to the appellants applying the private valuer's valuation was RM33,307,932.05. There was accordingly a difference of RM594,354.73 between the government valuer and the private valuer's valuation.

[10] The learned judge in his grounds of judgment dated 3 January 2008, in considering the valuation of the government valuer and private valuer, was of the view that both valuations were equally sound, the difference being in relation to the percentage of adjustments of each factor, which was small. The learned High Court judge then referred to s 40D, and held that he was bound to accept one of the two opinions of the assessors sitting with him. The learned judge then adopted the principle that, where both valuers had applied the correct principles of valuation, the court was to adopt the valuation that favoured the landowners. As the valuation of the private valuer was the higher of the two, he increased the amount of compensation awarded to the appellants

from RM31,987351.45 to RM33,307.932.05, and awarded interest at the rate of 8%pa from date of possession to date of full payment. In other words, the appellants succeeded in the land reference by obtaining an increased sum of RM1,320,580.60 as compensation arising from the said acquisition. Be that as it may, on the issue of costs, by reason of the amount claimed by the appellants being excessive compared with the amount awarded by the court, the High Court judge then invoked s 51. The High Court judge directed the appellants to pay 50% of the land administrator's costs and the fee of the private valuer at a rate of RM500 per day. The decision of the High Court dated 15 December 2005 is the subject matter of the land reference appeal.

KUALA LUMPUR HIGH COURT ORIGINATING SUMMONS NO R1–24 OF 2009

[11] On 4 March 2009, (ie about three years after the Kuala Lumpur High Court judge pronounced his decision in the land reference, and one year three months of the High Court judge's grounds of decision) the appellants filed Kuala Lumpur High Court Originating Summons No R1–24–06 of 2009, an application for judicial review for a declaration that s 40D(2) and 40D(3) is null and void and for an order that the decision of the High Court judge dated 15 December 2005 in respect of the amount of compensation awarded to the appellants in the land reference be set aside. On the date of the filing of the application for judicial review, the land reference appeal was then still pending before the Court of Appeal.

[12] In the application for judicial review the appellant contended that their right to receive adequate compensation under art 13 of the Federal Constitution had been infringed in the land reference. It was alleged that there was no independent judicial determination or excercise of judicial discretion in the land reference in the ascertainment of the amount of compensation due to them. This challenge was premised on the reasoning given by the learned High Court judge in the grounds of decision in the land reference.

[13] The High Court judge hearing the appellants' judicial review application was of the view the appellants' contentions were unfounded. She ruled that there was no abdication of duty on the part of High Court judge hearing the land reference and in making a determination as to the compensation to be awarded. She noted that the valuation reports of both parties were before the learned judge and the assessors appointed to assist him. It was not correct to say that the valuation report of the appellants' valuer had not been taken into consideration. She was of the view that the learned High Court judge hearing the land reference had taken into consideration all evidence, submissions as well as the opinions of the two assessors sitting with him in arriving at the decision which he did. His observation of the law to be

applied has to be read in context. She was of the view the appellant's counsel had misconstrued the High Court judge's observations.

[14] She was not persuaded by the argument that the impugned provisions had stifled the exercise of judicial discretion in the making of an award of compensation and that the role of a judge had been reduced to 'a mere rubber stamp'. The High Court ruled that s 40D(2) had not deprived the appellants of their right to adequate compensation under art 13 of the Federal Constitution. She then dismissed the appellants' application and awarded costs of RM5,000 to the respondent.

DECISION

[15] We dismissed both appeals for the following reasons.

[16] The appellants had on the facts of this case exercised their legal right to object to the compensation awarded by the land administrator by way of a land reference to the High Court. The High Court judge sitting with assessors made a decision in favour of the appellants. The amount of compensation to be paid to the appellants was increased by RM1,320,580.60. Notwithstanding the express provision of s 40D(3), that such a decision was 'final and there shall be no further appeal to a higher court', the appellant lodged an appeal against this decision (ie the land reference appeal). Not only that, pending disposal of the land reference appeal by the Court of Appeal, the appellants' deemed it necessary to file a judicial review application, which for all intents and purposes also relates to the amount of compensation payable to them arising from the acquisition of the said lands.

[17] We are of the view that the judicial review application is not maintainable by reason of the express provision in s 40D(3). Further, such an attempt to obtain a different outcome by way of an application for judicial review after more that three years had lapsed after the High Court judge had pronounced his decision in the land reference, and more than a year after the grounds of judgment had been furnished, clearly contravenes O 53 r 3(6) of the Rules of the High Court 1980 ('the Rules') which require an application for judicial review to be made:

> promptly and in any event within 40 days from the date when the grounds for the application first arose or when the decision is first communicated to the respondent provided that the court may, upon application and if it considers that there is a good reason for doing so, extend the period of 40 days.

[18] Compliance with the time frame prescribed by the Rules is fundamental as it goes to jurisdiction (see *Mersing Omnibus Co Sdn Bhd v Minister of Labour*

And Manpower & Anor [1983] 2 MLJ 54). On this ground alone the application for judicial review could and should have been dismissed by the High Court judge hearing the judicial review application.

[19] On the substantive arguments presented on the validity of s 40D(1), (2) and (3), we are of the following views. We note that the provisions relating to land references as to the manner such objection is to be decided had been subjected to amendments over the years. Initially, land references was decided by a judge sitting with assessors (1960 onwards), then to a judge sitting alone (1984 onwards). As for the appellants' case, the Act to be applied is that as amended by the Land Acquisition (Amendment) Act 1997 (Act A999).

[20] The appellants objection was in respect of the amount of compensation to be awarded to them. Sections 40A, 40B, 40C as well as 40D inserted by the Act A999 accordingly applies.

[21] Section 40D(1) and (2) states as follows:

> Decision of the Court on compensation
>
> 40 D
>
> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
>
> (2) Where the assessors have each arrived at a decision which differs from each other then the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.

[22] With effect from 1 March 1998, as submitted by the appellants' counsel, a land reference is to be heard by a High Court judge sitting with two assessors (one of whom shall be a valuation officer employed by the government) to determine the fair and reasonable amount of compensation payable arising from an acquisition. The High Court judge is required to adopt the opinion of the assessors sitting with him, or elect to adopt the opinion of one of them, if they differ. The legislative intent is clear and unambiguous. A High Court judge cannot come to a valuation different from the opinion of the assessors, or if different, from either one of them.

[23] The High Court judge hearing the appellants' application for judicial review ruled the High Court judge hearing the land reference had complied with the law as it now stands. We agree.

[24] The question for determination is whether this provision requiring a

High Court judge to accept the opinion of the assessors, or the opinion of one of the assessors sitting with him, rendered the right conferred by art 13 of the Constitution on a landowner to be given adequate compensation, ineffective and unconstitutional? A

[25] The appellants' Counsel, En Balwant Singh Sidhu, argued that s 40D was unconstitutional as judicial discretion to determine the adequacy of compensation under art 13 had been fettered by the opinion of assessors. The exercise of judicial discretion is now limited. A judge is legally compelled to concur with the opinion of the government valuer and private valuer, or if they differ, to either one of them. He is not at liberty to arrive at any other valuation. According to En Balwant, the opinion of the assessors, who, by qualification, are valuers, like all expert opinion, should be subjected to judicial scrutiny. He submitted that inadequate consideration was given to the valuation report submitted by the appellants' in the land reference, the contents of which had not been subjected to cross-examination, and therefore considered as unchallenged. B C D

[26] After careful consideration of the impugned provisions and art 13 of the Federal Constitution as well as the submissions presented before us, we are of the view that limiting the discretion of a High Court judge hearing a land reference to the opinion of the assessors appointed to assist him, alternatively, by the opinion of one of the assessors, does not infringe art 13 of the Federal Constitution. We are of such a provision is valid and of full legal effect. In our considered opinion the limitation requiring him to be guided by such an opinion is warranted as a High judge is no expert in determining the value of land. Valuation of land clearly is not a mathematical process. In particular, potential development value is not often easy to determine in the absence of an abundance of evidence from recent transactions in respect of comparable properties. Almost invariably there emerges from the consideration of all of the facts a fairly well-defined range, sometimes blurred at either end within which the answer must lie. The opinion of those of equal competence and experience may well tend to indicate different point within that range. Ultimately, it is a matter of opinion and experience. Thus, the requirement that the amount of compensation to be awarded is to be based on an opinion given by the experts in this particular field (ie a valuer), in determining the market value of the land that had been acquired and the amount of compensation to be awarded in our view is well founded. E F G H

[27] On the issue of the appellants' valuer not being subjected to cross-examination, nothing turns on this, as, equally, the respondent's valuer had also not been subjected to cross-examination. The market value of the said lands at the material time was clearly in issue. The conflicting valuation furnished by the appellants and the respondent was before the government I

valuer and the private valuer in arriving at an opinion for the consideration of the learned judge in determining the amount of compensation to be awarded to the appellants. The reasons given for the opinions presented by the assessors was considered by the learned judge to be sound. The opinions of assessors assisting the learned judge was very much lower than the valuation given by the appellant's' valuer.

[28] The record clearly shows that High Court judge made his own determination on the compensation to be awarded when faced with the different opinion of the assessors. He accepted the higher of the two. We are of the view that he was right in awarding the appellants the higher of the two valuations. The reasoning given for preferring one over the other is sound and should not be disturbed by an appellate court. Further, on the issue of costs in the land reference, the High Court judge was right in involving s 51 by not awarding costs to the appellants and in making the order of costs which he did.

[29] For the above reasons both appeals were dismissed. We fixed costs of the 2010 appeal at RM5,000 to the respondent. The deposit to the respondent to account of costs. By reason of the senior federal counsel appearing in the land reference appeal not asking for costs, we made no order as to costs in respect of this appeal and directed the deposit to be reimbursed to the appellants.

Both appeals dismissed.

Reported by Kanesh Sundrum